IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 22599 of 2007(M)

OS.303/1985 of II ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

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1. BABU @ SURENDRAN,
   S/O. SREEDHARA PANICKER, RESIDING AT ROADARIKATHU
   KADAYARA PUTHEN VEEDU, AZHAMKAL, MUKUNDARA DESOM,
   OTTASEKHARAMANGALAM PAKUTHY, THIRUVANANTHAPURAM DT

2. RAJENDRAN OF DO. DO.

3. VAMANAN, OF DO. DO.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS:

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1. RAJENDRAN, S/O. BHASKARAN NAIR,
   CHAMAVILA PUTHEN VEEDU,
   MUKUNDARA DESOM, KALLIKAD VILLAGE.

2. SREEDHARA PANICKER ARJUNAN,
   ROADARIKATHU KADAVARA PUTHEN VEEDU,
   AZHAMKAL, MUKUNDARA DESOM,
   OTTASEKHARAMANGALAM PAKUTHY.

BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.M.V.KIRAN MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: A TRUE PHOTOCOPY OF THE PRELIMINARY DECREE, DT. 16.8.1988, OF THE PRINCIPAL MUNSIFF, NEYYATTINKARA IN O.S. 303/1985

EXT.P2: -DO- OF THE ORDER DT. 12.4.2005 OF THE LAND TRIBUNAL, THIRUVANANTHAPURAM IN R.C.7/2003

EXT.P3: -DO- OF THE ORDER DT.31.10.2005 OF THIS HONOURABLE COURT IN WRIT PETITION (CIVIL) NO: 30540 OF 2005

EXT.P4: -DO- OF THE ORDER DT.19.6.2007 OF THE II ADDL. MUNSIFF, NEYYATTINKARA, IN E.P.262/2002 IN O.S.303 OF 1985.

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C).No.22599 OF 2007 M

Dated this the 20th August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed by the Additional Munsiff II, Neyyattinkara as well as the reference order passed by the land tribunal, Thiruvananthapuram in R.C.7/03. In R.C.7/03 the cause title only shows the name of a deceased person whereas in the execution proceeding itself when it was pending before the executing court the legal representatives of the said person has been impleaded. The learned counsel for the respondent No:1 has made available before me a notice issued by the land tribunal to the legal representatives. But in Ext.P4 order there is no finding to the effect that these persons had been served with notice. Therefore as the matter stands now reference case 7/03 cannot be said to be disposed of after due notice to the parties. Therefore, in fairness an opportunity has to be given to the legal representatives of the deceased to put forward their contentions and substantiate the same. Since the matter of deciding the question of kudikidappu is seen relegated to the execution proceedings it has become necessary to have a reference as done by the court below on the question of the establishment of the said right. Therefore, without going

into the merits of the case and in order to comply with the principles of natural justice, I set aside Exts.P2 and P4 orders and direct the learned Munsiff to refer the case back to the land tribunal. If the cause title of the execution petition is not amended a direction is given to amend the same as well and thereafter both parties are permitted to adduce documentary as well as oral evidence in support of their respective contentions and the land tribunal to dispose of the matter in accordance with law. I direct the parties concerned to appear before the court on 14.9.2007 and thereafter the matter be referred and the Tribunal shall fix a date, give notice to the parties/counsel appearing for the parties and dispose of the matter in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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